



# Oregon

Theodore R. Kulongoski, Governor

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April 22, 2008

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Mr. Bryan Foley  
U.S. Department of Energy  
P.O. Box 550, MA A6-38  
Richland, WA 99352

Dear Mr. Foley:

Oregon appreciates the opportunity to review the March 2008 draft of the U.S. Department of Energy's Supplemental Analysis (SA) for the Hanford Comprehensive Land Use Plan Environmental Impact Statement (DOE/EIS-0222-SA-01). Because the Comprehensive Land Use Plan (CLUP) is a key document guiding cleanup and land management decisions at Hanford, an up-to-date CLUP is critical to good decision making. Regrettably, we were disappointed by the SA effort described by the draft report, as we believe it failed to adequately consider some of the critical issues that should be part of this analysis.

Based on comments to Hanford Trustees and the HAB's River and Plateau Committee during the fall of 2007, and on language in the introduction of the SA, Oregon anticipated that the SA would consider several questions regarding the CLUP:

1. Has the CLUP been followed – are decisions being made that are consistent with land use decisions and plans articulated by land use designations and maps in the CLUP?
2. Are the decisions being made under the CLUP effective in allowing DOE to carry out and balance the four principal missions for the site (national security, energy resources, environmental quality and science) that were identified in the 1999 Record of Decision?
3. Are there changes in site conditions, management needs, and/or regulation that indicate a need to modify the administrative decisions (land use designations, land use map) that were presented in the CLUP?

The Introduction to the SA cites language from the CLUP and from the Council on Environmental Quality that seems to focus on the issues of the third question, emphasizing the need to evaluate "...if there are significant new circumstances or information relevant to environmental concerns..." The Introduction goes on to state that "DOE will determine whether ...there have been significant changes in circumstances or new information since the issuance of the CLUP in 1999 that are relevant to environmental concerns bearing on the CLUP or its impacts."

Surprisingly and disappointingly, there was essentially no analysis of new circumstances or information in the SA. The SA narrowly focused on Question 1, that is, on the process of implementing the CLUP in Hanford decisions and documents. Discussion throughout the SA report was focused on implementation of the CLUP, and whether the land use designations and land use map were followed in the approximately 200 documents reviewed as part of the SA.

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The evaluation forms used for the documents express this narrow focus of the SA. Questions on the forms are limited in scope to the mechanical issues of compliance and on whether there were changes in land use designation or the land use map. There were no questions on the evaluation form asking whether a report mentions or reflects new information or concerns, or whether the reviewer regarded the report as having new information. There were likewise no questions asking whether the CLUP enabled projects to more easily and effectively carry out the Hanford Site mission. By focusing on the process of implementing the CLUP rather than the underlying purpose of the CLUP and the administrative decisions it embodies, DOE seems to have lost sight of why the CLUP exists and why the SA was performed.

In Oregon's November 28, 2007 letter to you identifying issues for the SA, we expressed concern about use of the CLUP to constrain decision-making at Hanford. In discussing implementation of and adherence to the CLUP in management decisions, Section 5.4 of the SA calls the decision process for CERCLA and NEPA "acceptable and compatible" with the CLUP land use procedures. While true, the reality is that in CERCLA decisions, DOE has routinely cited the CLUP as definitive guidance for long-term land-use decisions related to cleanup, to the virtual exclusion of other factors. This has been particularly true for decisions that limit cleanup to something less than an unrestricted use standard. Because the range of options under CERCLA decisions has been constrained by the CLUP, it should not come as a surprise to DOE or readers of the SA that decisions made through the CERCLA process are consistent with the CLUP. Our concern from our November letter still stands, that the letter of the CLUP is being invoked, regardless of whether it is consistent with the spirit of the decision being made.

Perhaps the clearest example of our concern about the nature of the SA is Section 3.4 of the report, which briefly addresses biological resources. Since the CLUP was adopted in 1999, the Hanford Site has experienced several major range fires that have (in aggregate) burned more than 400 square miles of the site and have destroyed most of the mature sagebrush habitat at Hanford. Mature sagebrush habitat provides habitat for several threatened species, but has been in decline not only at Hanford but throughout the Columbia Basin. Sagebrush steppe is identified as a Level III (high value, difficult to replace resource value) habitat in the Hanford Biological Resources Management Plan (BRMaP) and has been identified by the State of Washington as priority habitat.

In summarizing the effects of (and reports about) two of the largest Hanford fires (the 24 Command fire in 2000 and the Wautoma fire in 2007), Section 3.4 of the SA states "While the two fires resulted in impacts to the land itself and may affect or modify DOE's ongoing management of biological and ecological resources on these lands, the CLUP land-use designations and map units did not change." Clearly, the fires would not result in change to an administrative decision (i.e., a land use designation or a map) embodied in the CLUP. More importantly, this statement completely misses the significance of the Hanford fires on the Hanford ecosystem. It fails to recognize the major loss of this critical habitat; fails to recognize that the fires represent an important change in circumstance at Hanford; and fails to recognize that the fires should have triggered a review/change of the CLUP to protect remaining sagebrush habitat. Remarkably, the change in circumstance and the management implications were not in any way acknowledged in Section 3.4 or elsewhere in the SA. To the contrary, Section 6 of the SA concludes that "DOE has not identified significant changes in circumstance or substantial new information that have evolved since 1999..."

Failure of the SA to recognize new circumstances and information is also apparent with regard to the land use amendments adopted by the City of Richland in 2005. The SA cites a letter from former RL manager Keith Klein to the City of Richland, which is quoted as saying in part "DOE concluded that the recommendations from the study would be one of the factors that would be taken into consideration if DOE re-evaluates its CLUP land use designations for the Hanford Site in the future." Regardless of where one stands on planned future land uses in the 300 Area, the reuse study conducted by the City of Richland for the 300 Area and the associated changes to the City's comprehensive land use plan can not be seen as anything other than new circumstances and information, relative to plans and information that existed when the CLUP was adopted in 1999. Moreover, it would seem that the SA is precisely the opportunity cited in Mr. Klein's letter as "in the future" when DOE would consider the city's study recommendations and amended land use plan. By ignoring the implications of the reuse study and land use amendments, the SA fails to meet its stated purpose.

The examples cited above represent just two of the instances in which we believe the SA overlooked substantive new issues and conditions at Hanford. Overall, we believe the effort put into the SA incorrectly focused on the CLUP process rather than on whether the current CLUP effectively supports site mission and resource management needs. We do not agree with DOE's conclusion that "DOE has not identified significant changes in circumstances or substantial new information ...since 1999."

We urge DOE to withdraw the draft Supplemental Analysis and to conduct a new set of analyses, focusing on the underlying purpose of CLUP implementation, rather than on the process of implementation. If we can be of support in such an effort, please let us know. If you have questions or wish to discuss any of our comments, please call Paul Shaffer of my staff at 503-378-4456.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Niles", written in a cursive style.

Ken Niles  
Assistant Director

cc: Nick Ceto, U.S. Environmental Protection Agency  
John Price, Washington Department of Ecology  
Steve Wiegman, U.S. Department of Energy, Office of River Protection  
Hanford Natural Resource Trustee Council  
Susan Leckband, Chair, Hanford Advisory Board